

Brothers (J. S.) al

## Medico-Legal Superstitions Concerning Criminal Inebriates.

---

Read in the Section on Neurology and Medical Jurisprudence, at the  
Forty-fifth Annual Meeting of the American Medical Association,  
held at San Francisco, June 5-8, 1894.

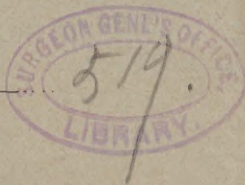
---

BY T. D. CROTHERS, M.D.  
SUPERINTENDENT WALNUT LODGE HOSPITAL, HARTFORD, CONN.

*Compliments of Author.*

---

REPRINTED FROM  
THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION,  
AUGUST 18, 1894.



CHICAGO:  
PRINTED AT THE OFFICE OF THE JOURNAL OF THE ASSOCIATION,  
1894.



# Medico-Legal Superstitions Concerning Criminal Inebriates.

---

Read in the Section on Neurology and Medical Jurisprudence, at the  
Forty-fifth Annual Meeting of the American Medical Association,  
held at San Francisco, June 5-8, 1894.

---

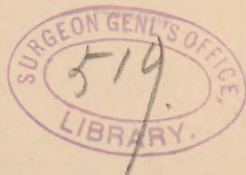
BY T. D. CROTHERS, M.D.

SUPERINTENDENT WALNUT LODGE HOSPITAL, HARTFORD, CONN.

---

REPRINTED FROM  
THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION,  
AUGUST 18, 1894.

---



CHICAGO:  
PRINTED AT THE OFFICE OF THE JOURNAL OF THE ASSOCIATION,  
1894.





## MEDICO-LEGAL SUPERSTITIONS CONCERN- ING CRIMINAL INEBRIATES.

---

During the past few months I have examined the facts and circumstances of six different homicides. In all these cases the prisoners were convicted and sentenced to suffer the extreme penalty of the law. In every instance the prisoner was an inebriate, and had been using spirits to excess before and at the time of committing the crime.

The defense in all these cases was insanity, intoxication and incapacity to reason of the nature and consequences of the act, with inability of control. The prosecution denied this, and sought to prove a state of sanity and mental capacity that in no way lessened responsibility. The jury in each instance considered this established and returned a verdict of guilty.

In four cases the judge expressed great approbation of the courage of the jury in their verdicts, and sentenced the prisoner in terms of severity and harshness.

In one instance the judge expressed great confidence in the wisdom of the law and predicted less crime when the punishment was clear and prompt.

In another case the judge urged the prisoner to throw off all disguise and be honest with himself before he died.

In one case the judge gave no opinion, in another he became lachrymose and fell into a religious strain.

I shall refrain from the use of names and dates, because these cases are not unusual or in any way

different from many others occurring daily in all the large cities of the country.

The question I propose to examine is: For what reasons and upon what evidence can medical men in the court room swear to the sanity and capacity to reason rationally of men who are under the influence of spirits? The superstitions of the law and the delusions of judges and jurors on matters on which they can not possibly form sound judgment, because they are not acquainted with the facts, are familiar to all.

Why should medical men accept these delusions and act upon them as if they were absolute facts? As an illustration, take any case where the question of insanity comes into the court room, and a certain number of physicians will give testimony in accord with legal conceptions of what should constitute insanity. Medical views of authorities are twisted and turned to suit some legal diction, or ignored altogether. Scientific facts and conclusions are strained down to the level of the law, and previous decisions of the courts, as if they were absolute authority.

Many physicians exhibit scientific demoralization in the court room, and are unable to state clearly or defend the authoritative teachings of those who are in a position to know. Hence the sneers at expert testimony and its supposed unreliability.

The physician should go into the court room as a scientific man, to give facts and opinions irrespective of all conclusions or possible antagonisms to prevailing views.

In Case 1 of these homicides mentioned, the physicians for the prosecution each acknowledged that they knew the law declared that drunkenness was no excuse for crime. Each one seemed to give very careful testimony that should not conflict with this dictum. In this case the prisoner came from a degenerate family, in which insanity, inebriety, pauperism and idiocy had appeared in many members. He had been an inebriate tramp from early life, drinking to excess at all times and places, and

had suffered from delirium tremens, sunstroke and typhoid fever. He had been a gambler, barkeeper and hotel runner, and he had lived very irregularly all his lifetime.

He was confined in jail some months suspected of burglary, but was finally released for want of definite evidence. He drank daily to excess from this time, and after an altercation over some trivial matter he threatened to kill a man; the next day he renewed the threats while intoxicated; the third day he met the man and killed him in a personal encounter. He had drank to excess all day, and while not stupid was clearly intoxicated. These facts were not disputed. On the trial three physicians swore that he had full power of forming conceptions as to his acts and their consequences. That as he had driven a hack and had acted rationally on these days in his business he must have been able to reason on the nature and quality of his acts. Also he could not have been insane or unconscious of what he was doing. On cross-examination, alcohol was called a stimulant, and never a paralyzant except in excessive doses, also persons who used spirits were not in any way affected mentally unless intoxicated.

In Case 2 the prisoner killed his brother under unknown circumstances. He affirmed no recollection of the act. He was a periodical inebriate and had been drinking for two weeks every night to excess. He had begged money on the night of the crime and when refused declared he would have money if he had to kill some one. The next morning he had money and his brother was found murdered. He had drank at intervals from the time he was in the army in 1864, gradually becoming worse. His father was an inebriate and his mother died insane, and he had lived an irregular life as a pedler. He had been in jail for intoxication and was weak-minded when not drinking.

On the trial two physicians testified that they had examined him and found him of sound mind, and



that he was fully capable of knowing what he did even when under the influence of spirits. They also swore that unless stupid or delirious he would be sane and conscious, and act with premeditation. They also believed that alcohol did not destroy normal consciousness, without giving evidence in conduct and appearance.

Case 3 was a man who had previously occupied a prominent position, and was considered to have more than average ability. He came from a consumptive and neurotic family. At 30 he was injured in a railroad accident and his wife was killed. From this time he drank and lived with low society, was a low barkeeper, pawnbroker, and drank steadily, seldom becoming stupid or delirious.

Finally he killed a low woman companion and ran away. The evidence showed his condition before and after the act to be in no way different from that at other times, although he was evidently under the influence of spirits. Two expert physicians swore to his measure of sanity and his ability to have restrained himself, also that he gave no evidence of ever having been insane and unable to reason on the nature of his acts.

Case 4 was a low Italian laborer without any history, except that of spending all his week's earnings drinking Saturday night and Sunday. He never seemed stupid or hilarious, but was rather thoughtful and sedate when drinking. He killed the barkeeper who refused to sell him more spirits. About the same testimony was brought on by the medical witnesses for the prosecution. The prisoner was considered sound and in possession of all his faculties at the time of the homicide.

Case 5 was a wife murder by an inebriate who was possessed when under the influence of spirits, of delusions of his wife's infidelity. When sober he was silent and seemed not to consider this, but after drinking he became morbidly suspicious of every act and word. In all other relations he was unchanged



and appeared rational. These drink periods would culminate in attacks of acute gastritis and long free intervals of sobriety. On the trial the medical testimony denied all possibility of his being unable to realize the nature of his acts, but assumed that his natural jealous disposition was increased by spirits, and he could at any time have checked it.

Case 6 was a farmer who had drank cider brandy for many years, and in a rage at his brother-in-law, who tried to arrange for the removal of the spirits, shot him. There was no history other than that of excessive drinking for many years and gradual decline of health. He appeared and acted rational to all general observation. The medical testimony on this trial was very emphatic in denying the irresponsibility of the prisoner, and assuming that he was fully competent to understand his acts and know right from wrong. Alcohol was declared to be non-poisonous taken every day.

Such is an outline of the medical testimony on which conviction was secured in each case. Three of the cases were defended by elaborate medical evidence, and the impression created was that it was simply paid testimony.

In two cases medical witnesses offered voluntary testimony in rebuttal to the evidence of the prosecution concerning the sanity of the prisoner. In one case no medical evidence in defense was presented. I assume that the evidence offered to show the mental integrity and responsibility of the prisoner by physicians in these cases is a fair example and is a common experience in all criminal courts of the country. I propose to show that such evidence is theoretical and entirely unverifiable.

The supposition that insanity must always be marked with delirium, idiocy or dementia, and that no insanity is present unless such symptoms are clear, is not true in reality. Many of the most dangerous lunatics and thoroughly insane men exhibit

a degree of mental acuteness and vigor not seen among the sane.

The old theories of right and wrong test, and of capacity to do otherwise, and free will to judge and decide of the act, are misleading and unsupported by facts. The same facts obtain in the study of inebriates; intoxication marked by delirium and stupor are not the only conditions of irresponsibility. Facts within the experience of every one point out states of trances, of delusions, of morbid impulses and imperative ideas, which are veritable insanities, that give no evidence of their presence except in certain lines of conduct, that are not understood.

The assumption of capacity with knowledge and control and the fact that the person was not stupidly and wildly intoxicated is wrong and unverifiable.

To assume sanity in any person who persists in using spirits to excess, a habit destructive to all his personal and pecuniary interests is contrary to facts, and is simply the tenacity of an old delusion of the value of alcohol. The person who uses spirits to excess at intervals or continuously must have a defective mentality, either before spirits were used, and certainly after its use he is more degenerate. Statistics are clear on this point, that in at least one-third of all cases of inebriates the use of alcohol is a symptom and not a cause. A symptom of some brain defect, either congenital or acquired, or some latent tendency to exhaustion which is exploded and made to take on acute conditions which are masked by spirits.

The theory that alcohol is purely a stimulant, and always the sole cause in inebriety is untrue. The theory that excess in the use of spirits is only temporary derangement, of the same class as indigestions, exhaustions from muscular overwork, is also untrue and dangerously misleading.

Recent experiments on healthy men show that in varying doses of from 1 to 2 ounces of spirits after the first hour the temperature and pulse fall, the

senses are diminished, the muscular strength is lessened, the memory is more imperfect and all the brain functions are slower and below the normal in acuteness. These are facts which can be measured and seen, and are not observations or theories, and they show that alcohol is a depressant and paralyzant in all cases. That the temporary increase of the heart's action, and circulation of the blood is deceptive and is followed by reaction and depression. The weary horse whipped to greater efforts is not given new strength, but is made weaker and more incapacitated. This depressant action of spirits in the second state is a fact that can be proved in every instance beyond all question by instruments of precision.

It will be obviously impossible to continuously depress all the vital functions of the mental and physical organism and retain health. The man who is intoxicated, stupid or delirious, is in the extreme stage of this depression. The man who at intervals for years becomes intoxicated, or who is obviously under the influence of spirits, can not be in possession, or have full control of his faculties.

In any of these cases of homicide, the history of continuous and excessive use of spirits, or excess at intervals, is almost absolute testimony of incapacity. No appearance of sane acts and reasoning are proof of sanity. Some of the most insane men both think and act rationally on matters outside of their delusions.

The inebriate in most cases acts automatically, following lines of previous thought and action. When forced into new fields of activity his weakness appears. In Case 6 no one suspected the real condition of his brain. Although his general health had greatly declined, yet when his brother sought to remove the spirits which were injuring him, he became delirious and killed him. His insanity had been the growth of years and was not the transient impulse of anger.



In Case 5 the presence of delusions had been recognized when suffering from the drink paroxysm. This, with the fact of having drunk for years, was clear proof of incapacity to reason or to control his acts.

The drinking history of Case 4, spending his wages weekly in spirit excesses was also clear evidence of mental degeneration and unsoundness.

Case 3 was clearly one of marked disease of the brain in which the use of alcohol was not only a symptom but an additional cause of irresponsibility.

Case 2 was evidently a trance state with a history of neurotic inheritance, which in itself would have caused doubts of capacity to reason rationally.

In Case 1 a similar bad inheritance and injury from sunstroke pointed to brain incapacity.

Irrespective of all this history, the fact of using alcohol to excess is evidence of a degree of brain failure that should be unquestioned. From clinical facts and teachings I affirm with confidence that no one who uses spirits to excess for any length of time has a normal sound brain. That it is rational to assume insanity in any case where the history indicates alcoholic excess for long periods before the commission of the crime. No appearances or sane acts should prove the sanity of a man who has been for years destroying himself with alcohol.

The question of how far he was unconscious of his acts, or unable to control himself, or comprehend right from wrong, opens up another field of inquiry, which can not be determined clearly, but the general question of his mental impairment should be considered established.

A further study of this question will show that the use of alcohol always paralyzes the higher functions of the brain, and is followed by heart feebleness and depression. The senses are disturbed and are less and less capable of transmitting accurate impressions. The higher brain is less able to comprehend the nature of acts and their relation to surroundings.

Delusions of strength are common, and events and their consequences, and motives and purposes are exaggerated, misconceived, misinterpreted, and the brain is unable to correct them.

All inebriates have defective brain and nerve power, and every toxic state from alcohol more or less permanently impresses and increases brain degeneration. All such persons have lowered pride of character, less ambition, less fear of consequences. The brain is anesthetized and crippled and unable to realize the nature of acts. Crime committed by inebriates must be under abnormal states. The more prominent the inebriety the more incompetent the brain is to act rationally and soundly.

The effort to find a point or dividing line where sanity and insanity join, or where the person could or could not have controlled his acts or realized their nature, is an impossibility which every advance of science demonstrates. Capital crime by inebriates is always the result of some circumstances or some sudden strains on an enfeebled brain; some morbid delusions or illusions that suddenly dominate the mind, or epileptic explosions masked and concealed in some way. Alcoholic somnambulism or trance conditions may be present in many cases. The mind during these periods is always dulled and largely unconscious of all external or internal considerations, and is subject to strange unknown impulses that may vary suddenly. There are present either states of insanity of inebriety, or the inebriety of insanity or both. Such cases are masked to all superficial observation, and are not subject to the ordinary influences and motives which control the normal mind.

The teachings of modern psychology fail to confirm the commonly accepted theory that states of delirium and dementia from alcohol are harmless, and that recovery from these conditions is complete. Sanity and clear healthy brain consciousness do not alternate with the delirium and stupor of intoxica-

tion. The moderate and continuous drinker suffers in the same way only in a lesser degree. The person who from continuous use of spirits develops an attack of acute mania and insanity, with all the classical symptoms, and after a few weeks restraint in an insane asylum is discharged as cured and sane, is a good illustration of the theoretic delusion that all injuries from alcohol are transient. When such persons relapse and commit capital crime the question of their former treatment in an asylum is only admitted in court as a general fact bearing on their possible mental state. This is an error and opposed by all teachings of facts. The subsidence of the acute symptoms due to alcoholic excess and the removal of spirits is not the cure or restoration of the disordered cell and nerve tissues.

The apparent sanity of the epileptic in his free intervals is no evidence that the attacks will not return, or that the man has recovered, or that he is fully sane and capable of exercising sound judgment. The periodical and continuous drinker is always unsound and unreliable; like the epileptic he can not be trusted to act normally under all circumstances. Crime by such persons is the natural consequence of a brain that is degenerating. It is unreasonable and unnatural to expect such persons to act rationally as other men who do not, or have not, suffered in this way. The court-room superstitions that overlook this fact, and attempt to measure the degree of consciousness of right and wrong, and the power of discrimination of facts and their relation to each other, is deplorable in this age of scientific inquiry.

The physician who is called to give evidence as to probable states of sanity in the case of an inebriate criminal, where the history of alcoholic excess is associated with the crime, is lending himself to encourage superstition that should rapidly disappear. The effort to formulate certain assumed facts into a position to support a theory that is unverifiable always ends in confusion and injustice. In three of



these six cases the testimony of the physicians who swore to the sanity of the prisoner was a sad mixture of confused, disjointed statements, which were open to so many exceptions as to be literally worthless. In all these cases the inquiry should have turned to the drink history of the criminal, its heredity and growth up to the commission of the crime. From these facts some idea of the capacity or incapacity of the mind to act rationally could be found. The exact condition of the criminal at the time the crime was committed, separated from events before and after, gives no clear conception of the man or act.

It is absolutely farcical for a medical man on the witness stand to be drawn into an explanation of metaphysical theories of inebriety. He should refuse to give an opinion on presumptuous cases, which involve half fact, with moral, legal and sentimental theories, that are false. He should refuse to attempt any explanation of motives or capacity to will or otherwise in a person who was under the influence of alcohol at the time of the commission of the act. He should testify clearly to the incompetency of any one drinking spirits to will or to do, at the time, and insist on only giving general conclusions from established facts. The questions should be: 1, was the prisoner an inebriate? Did he drink spirits before, at the time and after the commission of the act? If these questions are answered in the affirmative and on facts, the mental capacity may be doubted, reasonably and naturally; 2, what was the nature of the act, and the conditions under which it was perpetrated? Do they strengthen or disprove the inference of mental unsoundness; 3, what conclusions do the facts point to? If the preponderance of evidence indicates a defective consciousness of conduct and the relation and consequences of acts, the probability of disease of the brain in its broadest sense is almost a certainty.

No scientific study will sustain theories of the degrees of health and disease, or boundary lines of

responsibility and irresponsibility. If the prisoner has poisoned himself with alcohol before and at the time of the act, he can not be considered as sound, sane and in possession of normal faculties. Evidently there is here a very wide field for new and exact studies, which will revolutionize and clear up much of the superstition and odium which has grown up about expert medical testimony.

A summary of the facts may be grouped as follows:

The questions of inebriety are becoming more prominent in the legal treatment of crime, and yet to a large extent the theories of centuries ago prevail, and form the working basis from which to judge such cases.

Physicians as expert witnesses make the fatal mistake of attempting to harmonize facts and legal theories of interpretations, with some vague notions of insanity and inebriety.

It is a legal fiction and delusion to suppose that crime committed while under the influence of alcohol is the voluntary act of a conscious brain.

It is a delusion to interpret acts that indicate premeditation by inebriates as evidence of sanity and consciousness of their import.

It is a delusion to consider inebriety a normal condition, and that the victim has full power to poison himself for years, even up to and over into the region of full insanity, but should he commit crime punish him as sane and accountable.

It is a delusion to consider that all inebriates have the power to drink and abstain at will; that intoxication implies a voluntary state *which is under control* of the mind.

It is a *fact* sustained by unmistakable evidence that an inebriate who commits crime is not of a sound mind. That no criminal act by persons who are under the influence of spirits at the time of the commission of the act comes from a sane, healthy brain.

The delusions of the law insist on fixing bounda-

ries of responsibility, and urge medical men to go into this penumbra region of sanity and insanity, and draw lines between vice and disease, and indicate where human justice should punish and where excuse.

The medical man on the witness stand and at the bedside must go beyond the theories of yesterday or the facts on which yesterday's views were based. A clearer, wider range of facts point to broader conclusions to-day and still clearer facts to-morrow.







